IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 21918 of 2007(H)

CMP.2404/2007 of J.M.F.C.,ALATHUR

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PETITIONER:

P.S.SHAJI, AGED 45 YEARS,
S/O.THE LATE SREEDHARAN, PATHIYIRIKKAL HOUSE,
PADINGATTINKAL HOUSE, PADINJATTINKARA P.O., PALA,
KOTTAYAM.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR
SRI.ABHILASH AKBAR
SRI.T.B.SIVAPRASAD

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. CIRCLE INSPECTOR OF POLICE,
VADAKKENCHERRY POLICE STATION,
VADAKKENCHERRY.

BY GOVERNMENT PLEADER SRI.JIKKI JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, ALONG WITH WPC NO. 21934 OF 2007 WPC NO. 22002 OF 2007 CRMC NO. 2310 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).Nos.21918, 21934 & 22002 of 2007
and Crl.M.C.No.2310 of 2007

Dated this the 31st day of July, 2007

JUDGMENT/ORDER

The petitioners are owners of vehicles which are allegedly involved in the commission of offences under the Kerala Abkari Act. The learned Magistrate passed identical orders on 07.06.07 directing release of the vehicles on condition of the petitioners executing bonds for Rs.50,000/- with two solvent sureties each for the like sum. The learned Magistrate thereafter appears to have passed the impugned order dated 13.06.07 on realising that all the 4 vehicles concerned were worth Rs.4 lakhs each. Thereupon, the learned Magistrate carried out the correction in the order directing that the bond must be executed for Rs.4 lakhs with two solvent sureties each for the like sum. Consequent to the enhancement of value, there was a further direction that the sureties must either produce bank guarantee for Rs.4 lakhs or solvency certificates for such amounts. The petitioners claim to be aggrieved by the modified order dated 13.06.0. Various contentions are raised.

2. The most important contention raised is that the modification of the order by the learned Magistrate is in violation of the provisions of Section 362 Cr.P.C. The order should not have been altered by the learned Magistrate as a criminal court has no power to review its own orders.

3. Rigour of Section 362 Cr.P.C notwithstanding, it is very evident from a perusal of the two orders concerned that the learned Magistrate was

only making correction of an inadvertent error regarding the value of the property and the consequent bond to be executed. By no stretch of imagination can it be held that the order dated 13.06.07 is not one bringing about the correction of an inadvertent error committed in the previous order regarding the value of the vehicles. The consequent direction that the bank guarantee or the solvency certificates must be produced is only regarding the manner in which the solvency of the sureties is to be ascertained. It cannot be reckoned as a review of the earlier order. It can be reckoned only as a direction by way of clarification in the light of the enhancement of the amount of the bond which had to be secured. I do not find any error or vice in the impugned order which would justify the invocation of the jurisdiction under Section 482 Cr.P.C or Article 227 of the Constitution of India. It cannot be held that the impugned order violates or infringes the mandate of Section 362 Cr.P.C. It was only a correction of the amount of the bond and consequent stipulation regarding the nature of materials that must be produced to satisfy about the solvency of the sureties. In any event, the impugned order does not warrant interference. It is conceded that the petitioners have accepted the impugned order and got the vehicles released after seeking time for production of solvency certificates. That averments also does persuade me not to invoke the powers under Section 482 Cr.P.C.

4. In the result, these petitions are, dismissed. Finally the learned counsel for the petitioners prays that the learned Magistrate must be directed to grant some further time to comply with such conditions. The

petitioners can apply before the learned Magistrate and needless to say, appropriate orders on merits must be passed by the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-